IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5991 OF 2017

Kishor Gangar .. Petitioner

v/s.

The Union of India ..Respondent

Mr. Prabhakar Paranjape a/w Mr. Jas Sanghavi I/b PDS Legal for the petitioner
None for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 31st AUGUST, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 2nd December, 2016 passed by the Deputy Commissioner of Central Excise under the Central Excise Act, 1944 (the Act). The impugned order confirmed a show-causes notice dated 14th September, 2005 imposing penalty under Rule 26 of the Central Excise Rules (Rules) upon the petitioner as a partner of M/s. Tuffware Industries.

2. The impugned order dated 2nd December, 2016 (received by the

petitioners on 8th February, 2017) is subject to appeal under Section 35 of the Act. In the above view, we are not inclined to exercise our extra-ordinary jurisdiction to entertain this petition as an alternative remedy under the Act is available.

3. Mr. Paranjape, learned Counsel appearing for the petitioner submits that this Court should exercise its writ jurisdiction as the impugned order is without jurisdiction. This for the reason that there are orders of this Court on similar provisions holding that no penalty can be imposed upon the petitioner. Thus, the Court should not dismiss the petition on the ground of alternative remedy.

4. We find that the orders which are being referred to and relied upon by the petitioners are not in respect of Rule 26 of the Rules,which is subject matter of challenge here. Therefore, the applicability of decisions relied upon by the petitioner, would have to be decided in the context of the facts and the law in the present case. This examination would more appropriately be done by the appellate Authority. Therefore, in view of an efficacious alternative remedy available, we decline to exercise our extra-ordinary jurisdiction to entertain the petition under Article 226 of the Constitution of India.

5. However, we note that the petitioner was prosecuting this petition *bona fide,* as it was the view that the impugned order dated 2nd December, 2016 was without jurisdiction as pointed out above. However, as pointed out above, we are of the view that the issue urged before us would require examination and consideration at the hands of the appellate Authority. In these circumstances, bearing in mind the fact that the petitioner has approached this Court within a period of 60 days from the receipt of the impugned order and thereafter spent time in this Court *bona fide* prosecuting this petition, the delay in filing an appeal to the appellate Authority is condoned, if the same is filed within a period of 2 weeks from today. We have applied the decision of the Apex Court in ***M.P. Steel Corporation Vs. Commissioner of Central Excise, 319 E.L.T. 373*** to condone the delay.

6. Therefore, in case the petitioner files an appeal within a period of 2 weeks from today against the impugned order with the appellate Authority and satisfies the appellate Authority of complying with the other requirements of filing the appeal including the statutory deposit in accord with Section 35F of the Act, then the appeal would be entertained on merits.

7. The petition is disposed of in terms of the above directions.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**